

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2350 of 1995

with

CIVIL APPLICATION No 12 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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GOPAL RAMCHAND BHOJVANI

Versus

GARSIA R FULJI

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Appearance:

MR GAURANG H BHATT for Petitioner

MR RR TRIPATHI with AR SHAIKH for Respondent Nos. 1 & 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/04/99

ORAL JUDGEMENT

Admit. Mr RR Tripathi with Mr AR Shaikh appears and waives service of notice of admission for respondent Nos. 1 and 2 (original claimants).

2. This First Appeal is directed against the judgment and order dated 6.1.1992 passed by the Motor Accident Claims Tribunal (Auxl.), Jamnagar in Claim Case

No. 56/85 by which the Tribunal held that the original claimants (respondent Nos. 1 and 2 herein) were entitled to recover a sum of Rs.40,000/- from original opponent No. 1 (present appellant) and opponent No. 2-driver who are held to be jointly and severally liable to pay compensation with the running interest at the rate of 12% per annum from the date of claim petition till realization and with the proportionate costs.

3. The claim petition came to be filed as Bairajba died in a motor vehicle accident on 18.2.1983. The vehicle involved was truck No. GTY 3271. The parents of the deceased filed the claim petition alleging that the truck driver-original opponent No.2- Garasia Gumansang Adesang was driving the truck rashly and negligently and that the accident took place on account of the said rash and negligent driving. The Tribunal allowed the claim petition and passed the aforesaid award after considering the evidence led by the claimants and also considering that neither the appellant-opponent No. 1 (person alleged to be the owner of the truck) nor opponent No. 2 (alleged driver) came before the Tribunal to challenge the case of the claimants and that they had not even filed any written statement to the claim petition.

4. The present appeal is filed by original opponent No. 1-Gopal Ramchand Bhojwani, who was alleged to be the owner of the truck on the date of the accident. Respondent No. 3 in this appeal (original opponent No. 2) came to be deleted as per this Court's order dated 3.12.1997.

5. At the hearing of this appeal, the learned counsel for the appellant has submitted that the appellant had already engaged an advocate for defending the appellant before the Tribunal but without giving any notice to the appellant the learned advocate filed no instructions pursis Exh. 8. The appellant has already made this grievance in Ground (J) of the appeal memo. It is, therefore, submitted that the appellant may be given another opportunity to put up his defence before the Tribunal. In response to a query from the Court as to as to what is the defence the appellant has to plead, in case the appellant is given another opportunity to contest the claim petition, the learned counsel for the appellant has submitted that the appellant had already transferred the truck in question to a person called Popatbhai Manjibhai Patel in the year 1981 and, therefore, the appellant was not the owner of the truck on the date of the accident. He has further stated that there was also litigation between the appellant and the

said purchaser and his guarantor for recovery of the sale price of the truck in question as the appellant had filed Special Civil Suit No. 150/84. The learned counsel has, therefore, submitted that if the appellant is given an opportunity to lead his evidence, the appellant will be able to place all the necessary facts and material before the Tribunal.

6. On the other hand, Mr RR Tripathi, learned counsel for the respondents-original claimants has submitted that the accident took place in the year 1983 and till today the claimants have not received any amount from any of the opponents or any other party and, therefore, the appeal may be dismissed.

7. Having heard the learned counsel for the parties, it appears to the Court that in absence of the learned advocate for original opponent No. 1 or without giving him any opportunity of being heard, it may not be possible to give a specific finding one way or the other whether the appellant was aware about his learned advocate having retired from the matter. The Court, however, does not propose to adjourn the hearing of this appeal on that ground as the appeal is pending before this Court since 1992. In the facts and circumstances of the case, it would be just and proper to give a conditional opportunity to the appellant to contest the claim petition by remanding the claim petition to the Tribunal on condition that the appellant shall deposit a sum of Rs.15,000/- (Rupees Fifteen thousand only) before the Tribunal as per the following schedule :-

Amounts to be deposited

- (i) Rs.5,000/- by 30.4.1999
- (ii) Rs.5,000/- by 31.5.1999
- (iii) Rs.5,000/- by 30.6.1999

8. In view of the above discussion, the judgement and award passed by the Tribunal in MACP No. 56/85 is hereby set aside subject to the aforesaid condition being fulfilled. If the condition aforesaid is not fulfilled, the award shall stand confirmed.

9. It is further directed as under :-

- (i) As and when the aforesaid amounts are deposited by the appellant before the Tribunal, the Tribunal shall permit the claimants to withdraw the amounts and all these amounts shall be paid by A/c Payee Cheques in equal proportion to each

of the claimants. The Tribunal shall make sure that the cheques are delivered personally to the claimants and the claimants shall be personally informed about the amounts being paid to them.

(ii) The Tribunal shall hear and decide the claim petition as expeditiously as possible and in any case within a period of four months from the date of receipt of a certified copy of this order or the writ of this Court, whichever is earlier.

(iii) While the appellant will be permitted to contest the claim petition and to file any appropriate application for joining any other party, the appellant shall not be heard ultimately if it is found that the appellant has not complied with the aforesaid condition for depositing Rs.15,000/- as per the aforesaid time schedule.

(iv) Ultimately if the appellant succeeds before the Tribunal in proving that he was not the owner of the vehicle involved in the accident on the date of the accident, it will be open to the appellant to recover the aforesaid amount of Rs.15,000/- from the person who is held to be the owner of the vehicle on the date of the accident.

10. The records and proceedings of the claim petition shall be sent back to the Tribunal forthwith.

11. Since the appeal is disposed of, Civil Application No. 12/96 for stay does not survive and is disposed of accordingly.

Sd/-

April 16, 1999 (M.S. Shah, J.)

sundar/-